

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 85 (AJN)

5 ANTHONY LETTERIO,

6 Defendant.

7 -----x
8 New York, N.Y.
9 March 16, 2017
10 10:20 a.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: JESSICA K. FEINSTEIN

Assistant United States Attorney

18 THE C.H. SCHOLAR LAW FIRM

Attorneys for Defendant

19 BY: CALVIN H. SCHOLAR
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1 (Case called)

2 MS. FEINSTEIN: Good morning, your Honor. Jessica
3 Feinstein for the government.

4 THE COURT: Good morning.

5 MR. SCHOLAR: Good morning. Calvin Scholar for
6 Mr. Letterio.

7 THE COURT: Good morning, Mr. Scholar.

8 Good morning, Mr. Letterio.

9 A bit of a late start, Mr. Scholar.

10 MR. SCHOLAR: Yes, Judge. The order I received said
11 318, so I went to courtroom 318.

12 THE COURT: That was a mistake. No one directed you
13 here?

14 MR. SCHOLAR: Judge, I went up to courtroom 906, and
15 that's when the sign said 706, so I came down.

16 THE COURT: No one in 318 sent you here?

17 MR. SCHOLAR: No, Judge.

18 THE COURT: Good to know. Thank you for adjusting.

19 We are here today for a sentencing in the United
20 States versus Letterio, 15 Cr. 95. In preparation for today's
21 proceedings I've reviewed the probation report which is dated
22 November 16, 2016. I've also received and reviewed the
23 following additional submissions:

24 I have the defense's submission. Mr. Scholar, I don't
25 have a date on the submission. Did you do an ECF filing?

1 MR. SCHOLAR: I did, Judge.

2 THE COURT: Do you recall what date it was?

3 MR. SCHOLAR: That was March 7th.

4 THE COURT: I'll call this the March 7th, 2017
5 submission by the defense. Attached to the memorandum is a
6 large set of exhibits from Exhibit 1 through Exhibit 43. This
7 consists of many letters from family members, friends, and
8 other community members who know Mr. Letterio. Other exhibits
9 include photographs of family members, a later exhibit has
10 photographs from a GED graduation class at the MCC, there are
11 educational documents for both Mr. Letterio and his children,
12 there are work performance evaluations for Mr. Letterio from
13 the prison, there are documents related to the dismissal of the
14 Bronx assault case, there are a large number of MCC
15 certificates of completion, there's also a letter from counsel
16 making objections to the PSR, which are also made in the
17 sentencing memorandum.

18 I did receive a supplemental memorandum by cover
19 letter from Mr. Scholar dated March 12, 2017, and that was just
20 some additional supplemental exhibits, including some
21 additional MCC certificates of completion, there's a letter
22 confirming Mr. Letterio's participation in the nonresidential
23 drug treatment program, and there are some additional letters
24 from friends of Mr. Letterio.

25 Then I have the government's submission, which is

1 dated March 10th, 2017.

2 Counsel, is there anything else I should have in front
3 of me for purposes of sentencing?

4 MS. FEINSTEIN: No, your Honor.

5 MR. SCHOLAR: No, your Honor. I did have a chance to
6 make a hard copy of the exhibits I submitted on the 14th. I'm
7 not sure if the Court wants it?

8 THE COURT: I printed hard copies so I'm set. Thank
9 you, sir.

10 Can you confirm that you each received the other's
11 submissions, please?

12 MS. FEINSTEIN: I can.

13 MR. SCHOLAR: Yes, your Honor.

14 THE COURT: All right. Turning to the presentence
15 report.

16 Mr. Scholar, I know that you have, but for the record,
17 have you read the presentence report and discussed it with your
18 client?

19 MR. SCHOLAR: I have, your Honor.

20 THE COURT: We'll turn in a moment to the objections
21 that you submitted to the probation officer that I gather were
22 not addressed.

23 Let me first ask, Mr. Letterio, did you have an
24 opportunity to review the presentence report and discuss it
25 with Mr. Scholar?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Ms. Feinstein, for the record, did you
3 review the presentence report?

4 MS. FEINSTEIN: I did.

5 THE COURT: First, let's take your objections,
6 Mr. Scholar. They're the ones that you've indicated in your
7 sentencing memorandum.

8 MR. SCHOLAR: Yes, your Honor. Do you want me to read
9 them into the record?

10 THE COURT: No. Let me ask, Ms. Feinstein, does the
11 government have any objections to any of the noted objections
12 made by defense counsel?

13 MS. FEINSTEIN: A couple things, your Honor. First --

14 THE COURT: Let me get them in front of me.

15 MS. FEINSTEIN: Yes.

16 THE COURT: I'm on page 8 of Mr. Scholar's sentencing
17 memorandum.

18 MS. FEINSTEIN: Yes. Page 8. I do note that
19 paragraph 4, which is on page 4 of the PSR, which recounts the
20 charges in Count Three does incorrectly list the defendant's
21 name. We agree that that should be stricken. We have no
22 objections to --

23 THE COURT: I'm sorry. Which paragraph?

24 MS. FEINSTEIN: That's paragraph 4 on page 4, which
25 refers to Count Three. And on page 8, that's of his sentencing

1 memorandum, that's paragraph 3.

2 THE COURT: Okay. So paragraph 3. You agree with
3 that?

4 MS. FEINSTEIN: We agree with that. We have no
5 objection to paragraphs 1 and 2.

6 Paragraph 4, we disagree with Mr. Scholar regarding
7 the text messages and statements on the text messages.

8 THE COURT: You cite those --

9 MS. FEINSTEIN: We do.

10 THE COURT: -- at least some of those text messages in
11 your sentencing memorandum.

12 MS. FEINSTEIN: That's correct.

13 Paragraph 5, I actually think there's no real dispute
14 here between the parties that Mr. Letterio is not personally
15 responsible for the amount of drugs listed, 400 to
16 700 kilograms of marijuana, that's the amount of the whole
17 conspiracy. He was only personally responsible for a portion
18 of that, but again, he legally is liable for the entirety of
19 the conspiracy.

20 THE COURT: Well, on that point, Mr. Scholar, that's
21 correct, right, and was what was anticipated with the plea
22 agreement?

23 MR. SCHOLAR: Yes, Judge, that's correct.

24 THE COURT: Is there any change to the PSR that you're
25 requesting via paragraph 5?

1 MS. FEINSTEIN: No, your Honor. By the way --

2 THE COURT: That was for Mr. Scholar.

3 MS. FEINSTEIN: Oh, sorry.

4 THE COURT: Mr. Scholar, are you requesting a change
5 to the PSR?

6 MR. SCHOLAR: No, your Honor, not with respect to that
7 matter.

8 THE COURT: Right.

9 MS. FEINSTEIN: As for the rest, no objections, your
10 Honor.

11 THE COURT: All right. What we'll do is with respect
12 to -- I guess paragraph 4 is the open one, but first,
13 Mr. Scholar, for paragraphs 1, 2, 3, 6, 7, and 8, you've noted
14 these points, but do you want to make specific requests for
15 changes to the PSR?

16 MR. SCHOLAR: No, your Honor, not with respect to
17 those paragraphs.

18 THE COURT: I think the open question is paragraph 4
19 where there's a disagreement. The government does rely on
20 those texts in its sentencing memorandum in support, I think,
21 of a few points.

22 One, Ms. Feinstein, tell me if you agree, one, it sort
23 of puts some content behind the three-point enhancement for
24 leadership because the government contends it shows
25 Mr. Letterio directing at least one person with respect to the

1 drug conspiracy. Another point made, I think it sort of
2 suggests that Mr. Letterio was voicing frustration with
3 individuals who were potentially cooperating with law
4 enforcement. That seems to be not an insignificant point.

5 I think, Mr. Scholar, the question to you is whether
6 you're seeking to prove up the counterassertion contained in
7 paragraph 4 through some sort of Fatico.

8 MR. SCHOLAR: No, your Honor. Our objection was
9 basically just to the sentence that that text message as
10 referenced in the --

11 THE COURT: That specific text message?

12 MR. SCHOLAR: That specific text message, if that was
13 what the probation department was relying on, there was an
14 alternate set of facts or information that Mr. Letterio had.

15 THE COURT: Let me just look at paragraph 15.

16 MS. FEINSTEIN: It's paragraph 21, your Honor, on
17 page 15.

18 THE COURT: Thank you.

19 So Mr. Scholar, you object regarding the sale of
20 narcotics language in that paragraph, is that essentially
21 the --

22 MR. SCHOLAR: Yes, Judge.

23 THE COURT: I'm trying to think. Are these
24 specific -- there are other texts that you reference in your
25 sentencing memorandum.

1 MS. FEINSTEIN: Yes, your Honor. In paragraph 21, it
2 talks about a text on April 23rd, 2016.

3 THE COURT: Yes.

4 MS. FEINSTEIN: I will note that -- sorry, in the PSR.
5 And I doublechecked this last night, and I'm sorry that this is
6 our fault we didn't catch this, but the person who sent the
7 message, "Stacked the trap. Need a rack or better for
8 Thursday," is the defendant and not Mr. Thomas. So just the
9 names are switched in that paragraph.

10 THE COURT: So it should read "Letterio sent a text
11 message".

12 MS. FEINSTEIN: Yes. And I did doublecheck this last
13 night in Mr. Thomas' phone, which is where this comes from. We
14 think this is plainly narcotics language. "Rack" refers to an
15 amount of drugs, and a "trap" is a secret place where you store
16 narcotics. And in context with all the other text messages
17 that we cite, we think there's no basis for suggesting
18 otherwise, your Honor.

19 THE COURT: So Mr. Scholar, it's a procedural question
20 to you whether you would like some sort of Fatico hearing to
21 support the assertion made in paragraph 4 on page 8 of your
22 sentencing memorandum.

23 MR. SCHOLAR: Judge, I've spoken to Mr. Letterio, and
24 he would request a hearing with respect to those points.

25 THE COURT: All right. Then we'll come back for a

1 hearing. Do you want to take a little bit of time,

2 Mr. Scholar?

3 MR. SCHOLAR: Thank you, your Honor.

4 THE COURT: I'll step down for a few moments.

5 (Recess)

6 THE COURT: Mr. Scholar, have you had an opportunity
7 to discuss the issue with your client?

8 MR. SCHOLAR: Yes, I have, your Honor, and I believe
9 Mr. Letterio would like me to speak to the government.

10 THE COURT: Okay.

11 (Pause)

12 MR. SCHOLAR: Judge, after speaking with the
13 government, I would have a question as to whether the Court
14 felt that that text that's listed in paragraph 21 was material
15 with regards extending?

16 THE COURT: I'm not certain it is. I have in mind
17 some of the messages cited in the government's brief. I can't
18 say any one of them is material, and I'm not sure that this is
19 one of the texts cited or not.

20 Ms. Feinstein, do you recall?

21 MS. FEINSTEIN: It is one of the texts cited, but
22 there are several there cited in addition, your Honor.

23 THE COURT: No. It's interesting that the names are
24 reversed here, because as it was in the PSR, and now I
25 recognize it, it was suggesting that Mr. Thomas was directing

1 Mr. Letterio, but in fact, if the names are reversed, it's
2 Mr. Letterio directing Mr. Thomas.

3 I don't need to rely on this email in any way. I
4 mean, indeed, by admission -- correct me if I'm right,
5 Mr. Scholar -- Mr. Letterio admits to directing Mr. Thomas in
6 the narcotics activity that's the basis for the three-point
7 enhancement, and so if that's the case, this text adds nothing
8 to that basic factual proposition.

9 MR. SCHOLAR: Judge, I've spoken to Mr. Letterio, and
10 he indicates he would like to proceed with sentencing today.

11 THE COURT: I'll state again clearly, I think we
12 should resolve how to deal with this paragraph, both because
13 I'm not going to rely on it and because it's wrong, but I'll
14 state clearly that I'm not relying in my sentencing conclusion
15 on the April 23rd, 2016 text message.

16 Ms. Feinstein, what do you propose just with respect
17 to the PSR?

18 MS. FEINSTEIN: If your Honor is not relying on it
19 then what I would propose, since it's incorrect as it stands,
20 is just striking that text from the PSR.

21 THE COURT: I agree with that practical solution.

22 Mr. Scholar, do you agree with that?

23 MR. SCHOLAR: Yes, Judge, I agree with that.

24 THE COURT: In a sense, I'm granting the defense's
25 request. I am striking paragraph 21 of the PSR on page 15.

1 As we've discussed, the other paragraphs that you
2 noted, the government agrees with your objections, but
3 Mr. Scholar, you're making no specific request for alterations
4 to the PSR on any of those points; is that correct? Other than
5 the striking of paragraph 21.

6 Well, and I'm sorry, that's not true. The point in
7 paragraph 3 of your sentencing memorandum which notes, as the
8 government agrees, that the defendant, Mr. Letterio, was not
9 charged in Count Three of the indictment, so I will make that
10 change, as well, to the PSR.

11 MR. SCHOLAR: And Judge, with respect to paragraph 20,
12 the reference to the ecstasy sale, we had also pointed that out
13 to the Court in our sentencing memorandum.

14 THE COURT: What paragraph in your memorandum is that?

15 MR. SCHOLAR: That is page 9, and that's the third
16 full paragraph.

17 THE COURT: Of your sentencing memorandum?

18 MR. SCHOLAR: Yes, Judge. It's in the third full
19 paragraph on page 9.

20 THE COURT: Not one of the numbered paragraphs?

21 MR. SCHOLAR: No, Judge.

22 THE COURT: I see. "Insufficient evidence to support
23 the conclusion that Mr. Letterio participated in a sale of
24 ecstasy pills," and that's in reference to what paragraph in
25 the PSR?

1 MR. SCHOLAR: That's paragraph 20 on page 15.

2 THE COURT: That reads that, "On April 23rd, 2015, law
3 enforcement conducted a controlled buy of 17 ecstasy pills from
4 Anthony Letterio at a named address which was eight blocks from
5 BMB's B Road spot," and it goes on to say, "The sale was set up
6 by Letterio's brother, Calvin Rugs," and then goes on.

7 So the defense's request is that those first few
8 sentences of paragraph 20 are struck? Is that the request?

9 MR. SCHOLAR: That would be the request, Judge.

10 THE COURT: Ms. Feinstein?

11 MS. FEINSTEIN: We're not prepared to prove that at
12 this time, so your Honor can strike the first, I guess it's two
13 sentences from paragraph 20.

14 THE COURT: Thank you. I will strike the first two
15 sentences from paragraph 20 of the PSR.

16 Any other changes to the PSR requested, Mr. Scholar?

17 MR. SCHOLAR: No, your Honor.

18 THE COURT: So other than those alterations that we've
19 discussed, and putting aside for a moment the calculation of
20 the sentencing guidelines, are there any objections to the
21 report regarding factual accuracy, any other objections?

22 MS. FEINSTEIN: No, your Honor.

23 THE COURT: And you indicated no, Mr. Scholar?

24 MR. SCHOLAR: I'm sorry, Judge. There was one -- a
25 last point in paragraph 83.

1 THE COURT: Okay, go ahead.

2 MR. SCHOLAR: It reflects that Mr. Letterio pled
3 guilty to a conspiracy distributing crack as opposed to
4 marijuana.

5 THE COURT: Yes. That should be changed. Paragraph
6 83 should be changed to read "to distribute marijuana" instead
7 of "a detectable amount of crack".

8 MR. SCHOLAR: That's correct.

9 THE COURT: Ms. Feinstein?

10 MS. FEINSTEIN: No objection.

11 THE COURT: We'll make that change, as well.

12 And I suppose I should strike the ten-year mandatory
13 minimum language as not applicable?

14 MR. SCHOLAR: Yes, your Honor.

15 THE COURT: I will strike that, as well, from
16 paragraph 83.

17 Anything else, Mr. Scholar? Any objections regarding
18 factual accuracy other than what we've discussed and the
19 changes I've made?

20 MR. SCHOLAR: No, your Honor. Thank you.

21 THE COURT: Hearing no further objections with the
22 changes that I've noted to the PSR, I will otherwise adopt the
23 factual recitations set forth in the PSR. The report will be
24 made a part of the record in this matter and placed under seal.
25 If an appeal is taken, counsel on appeal may have access to the

1 sealed report without further application to this Court.

2 Turning to the guideline calculations. As counsel is
3 aware, I am no longer required to follow the United States
4 Sentencing Guidelines, but I still required to consider the
5 applicable guidelines in imposing sentence and must therefore
6 accurately calculate the sentencing guideline range.

7 Here, we have a discrepancy between the PSR's
8 calculation and the parties' calculation as reflected in the
9 parties' stipulated guideline range in the plea agreement, as
10 well as in the parties' sentencing submissions. Both the
11 government and the defendant maintain the stipulated range is
12 correct and the PSR is wrong.

13 There are two points of distinction. First, as to the
14 offense level, the PSR does not indicate a three-level increase
15 pursuant to 3B1.1 based on the defendant being a manager or
16 supervisor but not an organizer or leader. So the parties'
17 stipulated range is to include a three-level increase here
18 based on the admission that Mr. Letterio directed at least one
19 member of the narcotics conspiracy, and specifically,
20 Mr. Thomas.

21 That's the government's current position?

22 MS. FEINSTEIN: That's correct, your Honor.

23 THE COURT: Mr. Scholar?

24 MR. SCHOLAR: No objection to that, Judge.

25 THE COURT: All right. I will conclude that the

1 enhancement applies here based on the record before me and the
2 parties' agreement that Mr. Letterio managed at least one
3 individual in this large multimember conspiracy. That is a
4 sufficient record to determine that this enhancement applies.

5 Second, the PSR assesses criminal history points for
6 Mr. Letterio's prior narcotics convictions. The government
7 states in its memorandum that it would not be able to prove by
8 a preponderance of the evidence that the earlier conduct was
9 part of a different crime. Based on that statement, I'm
10 required to conclude that the underlying convictions are part
11 of the charged conspiracy and, thus, do not allow for the
12 assessment of additional criminal history points.

13 Have I correctly stated the government's
14 understanding?

15 MS. FEINSTEIN: That's correct, your Honor.

16 THE COURT: And Mr. Scholar, your understanding, as
17 well?

18 MR. SCHOLAR: Yes, your Honor.

19 THE COURT: So I do make that conclusion that no
20 criminal history points are assessed, given that the earlier
21 conduct was part of the charged conspiracy.

22 I'll state my sentencing calculation and just make
23 sure there are no final objections.

24 The base offense level here is 26 because, using the
25 drug quantity table at 2D1.1, 26 is the base level for an

1 offense here, this conspiracy involving between 400 and
2 700 kilograms of marijuana.

3 I would add three points pursuant to 3B 1.1(b) for the
4 reasons I stated a moment ago, and will subtract three points
5 based on acceptance of responsibility, including the additional
6 point for early acceptance of responsibility.

7 So with adding three and subtracting three, this
8 brings me back to the total offense level of 26.

9 With no criminal history points, the Criminal History
10 Category is I, and this produces a sentencing guideline range
11 of 63 to 78 months.

12 Any objections?

13 MS. FEINSTEIN: No objection.

14 MR. SCHOLAR: No objection, Judge.

15 THE COURT: Based on the parties' agreement, the
16 absence of objection and my independent evaluation of the
17 sentencing guidelines, what I've just stated is my conclusion
18 using the August 1st, 2016 guideline manual.

19 I do find the offense level is 26, Criminal History
20 Category is I, and the sentencing guideline range is 63 to 78
21 months.

22 Your plea agreement indicated that, though both sides
23 are free to argue for a variance from the guideline range,
24 neither party would seek a departure within the guideline
25 system. Is that correct?

1 MS. FEINSTEIN: That's correct, your Honor.

2 MR. SCHOLAR: Yes, your Honor.

3 THE COURT: Nevertheless, I've considered whether
4 there's an appropriate basis for departure from the advisory
5 range within the guideline system and did not find any grounds
6 warranting departure.

7 So with that, I'm happy to hear, though I have read
8 the submissions in full, happy to hear any statements from
9 counsel.

10 Ms. Feinstein, does the government wish to be heard
11 further with regard to sentencing?

12 MS. FEINSTEIN: We'll rest on our submission, barring
13 any questions from your Honor.

14 THE COURT: Mr. Scholar.

15 MR. SCHOLAR: Thank you, your Honor.

16 Your Honor, I would like to acknowledge that there are
17 some family and friends of Mr. Letterio in the audience.

18 THE COURT: Okay. I could hear you better at that
19 mic. I'm not sure if it's the positioning. If you don't mind.

20 MR. SCHOLAR: Is that better?

21 THE COURT: It is. Thank you.

22 MR. SCHOLAR: I would also like to acknowledge that
23 there is a representative from the Focus Forward Project here
24 in court on Mr. Letterio's behalf. And the Focus Forward
25 Project, as you know, is a program that helps people who have

1 been detained with reentry into the community. And it's
2 important because so many people who have been detained have
3 had their dreams crushed, and there's no belief or hope that
4 they can actually ever make it back into community. And what
5 happens is, is that the society has pushed these people further
6 and further to the periphery of society where they feel that
7 there's no other option but for them to commit further crimes.

8 And the Focus Forward Project actually helps them
9 combat that and actually helps them see another way. And in
10 this case, Mr. Letterio has grabbed that as a lifeline, and
11 that's really what it has been for him. These programs are not
12 just ways to impress or to occupy his time, he's actually taken
13 these programs at MCC, the Focus Forward Project, and used them
14 as a lifeline, because he sees for the first time in over a
15 decade that he's actually able to support himself, support his
16 family by gainful employment by being a counselor, by being a
17 mentor, that these are actually paid positions, and it may not
18 have come by the way he envisioned or dreamed by being a
19 basketball star or using his degree in international business
20 administration, but he's found another way.

21 And it's unfortunate he had to come to this point and
22 be housed at the MCC for someone just to take a chance on him,
23 those MCC officials, the guards, for them to show him what he
24 could not get on the street, which was that he's not a failure,
25 he's not someone that can't obtain the dream just because he

1 can't do it or he wasn't able to do it in the way he
2 envisioned.

3 My sentencing submission details the struggles he's
4 had in life. To put it simply, he was on the cusp of grabbing
5 his dream. He was a semester away from graduating with an
6 advanced degree in international business, being able to apply
7 for jobs. He was sought after by employers at his college.
8 Beyond that, he was star of the basketball team. His limits
9 were endless. And based upon where he came from, that was
10 truly extraordinary.

11 Unfortunately, based on the bad turn, all that was
12 taken away from him within a heartbeat. It was -- he was right
13 there. He was able to grab the brass ring, and it was just
14 snatched out of his hands.

15 And based upon that, he fell into this conspiracy.
16 Many people talk about losing a dream, and they say that you
17 have to overcome, you have to pull up by your bootstraps. But
18 people often talk about it as a dream deferred. They talk
19 about being able to overcome with the aid of a support system.
20 Mr. Letterio had none of those.

21 I'm not minimizing his criminal conduct, but his life
22 has provided a context for his bad decisions. And it's a story
23 told by too many cases, too many times. And in order to really
24 deal with what's happened, it takes a level of sophistication
25 that many people are not willing to express, in that it's easy

1 to say we want to be tough on crime, it's easy to say that
2 people who commit crimes are bad people and they should be
3 pushed onto the sideline, but not many people talk about what
4 happens or what makes a person or makes a person fall into a
5 situation like this.

6 In many ways, Mr. Letterio is a victim of bad luck,
7 for many ways, and he's also a victim of his own bad decisions,
8 and he's also a victim of the forces that prey upon so many
9 youth in communities like his, which is one of the poorest
10 congressional districts in the country.

11 Now, we would ask for a below guidelines sentence
12 because I would submit to this Court that the guidelines
13 approach is simply to ignore the humanity of it all. It's
14 simply ignore what makes us us.

15 It's hard to quantify the human experience, and it's
16 hard to understand what happened to Mr. Letterio. It's hard to
17 understand what it's like to have a dream that you've worked
18 for for over ten years snatched away right as you're reaching
19 the finishing line. It's hard to look at your children as they
20 sleep and hear their stomachs grumbling because you can't use
21 your degree to pay for their food. It's hard to watch a mother
22 wear shoes with holes in them and raggedy clothes, to keep the
23 lights on so you can do your homework and everybody's counting
24 on you to get this job to raise everybody up, and it's snatched
25 away from you right at the end of it.

1 And again, I'm not minimizing, but I would submit to
2 this Court that if that happened to any number of people, they
3 would be turned into lunatics. It wouldn't be that easy to
4 overcome, and that it's not in a situation like Mr. Letterio
5 has.

6 So what he's been able to accomplish with his post
7 offense rehabilitation, we would submit, has been
8 extraordinary. He's been able to obtain countless certificates
9 of completion at MCC, he's had personnel from BOP write him
10 letters on his behalf, he's had certificates of appreciation
11 from MCC, which I've never seen in my experience, he's had --
12 he's tutored, he's helped the prison guards, he's counseled
13 other inmates, he's cleaned up after other inmates' messes as
14 an orderly in the jail. Truly, what he's been able to overcome
15 by this point, I would submit to this Court is extraordinary.

16 Again, Judge, he's made some bad decisions. He
17 slipped up. He fell into this conspiracy in many ways because
18 of life circumstances. I would submit that doesn't make him a
19 bad person, I just -- I would submit that makes him human, and
20 the humanity of it is he's a person who's seen the other side,
21 he's rehabilitated himself, and it's not that he's looking for
22 a lower sentence because he doesn't feel he should be punished,
23 but it's just that he's been able to truly embody what the
24 Focus Forward Project has stands for, which is that there has
25 to be a means for reentry, and he's looking at it, and that's

1 the dream that he has, and that's the dream that is available
2 for him now. And he's ready. He's ready to take that next
3 step.

4 And for those reasons, we would ask that this Court
5 impose a sentence of time served. Thank you, your Honor.

6 THE COURT: Thank you, Mr. Scholar.

7 Ms. Feinstein, just a couple quick questions?

8 MS. FEINSTEIN: Yes, your Honor.

9 THE COURT: A couple arguments in the defendant's
10 submission I just wanted to get the government's reaction to
11 with respect to variance.

12 MS. FEINSTEIN: Sure.

13 THE COURT: One, Mr. Letterio's age as a basis for
14 conclusion of unlikelihood of recidivism. Two, the conditions
15 in the MCC as a basis for a variance.

16 MS. FEINSTEIN: I'll take -- the first question was
17 about his age. You know, your Honor, that cuts both ways
18 sometimes. I think in general it is true that, as people age,
19 they are less likely to commit crimes. There have been studies
20 of that. On the other hand, this is a defendant who was caught
21 a couple times, more than a couple times, has served real time
22 before on prior drug convictions, hasn't appeared to learn the
23 lesson, and just in 2016, last year, was continuing to engage
24 in this behavior.

25 Now, that's not to take away from some of the very

1 real rehabilitative work it appears that this defendant has
2 been doing since his incarceration, but I think that would be
3 our best response to that. It's hard to say sometimes how age
4 plays into it.

5 Your other question was about conditions in the MCC.
6 I don't have a direct response to that, your Honor. We
7 certainly -- prison is not easy, but I don't know of any reason
8 why his experience would be any different than any other
9 defendant's that is currently at the MCC, so I don't believe
10 that's a reason to depart downwards, your Honor.

11 THE COURT: All right.

12 Any final points, Mr. Scholar?

13 Oh, I'm sorry. I apologize. Ms. Feinstein, I always
14 ask for some placement of one of the defendants in this case in
15 the overall sort of scheme so I can assess relative levels of
16 culpability.

17 MS. FEINSTEIN: Your Honor, this defendant is
18 certainly not among the most culpable here, he is not among the
19 very least, but he was only charged in a marijuana conspiracy.
20 He did have a managerial role so that puts him below the least
21 culpable, but I would say he's probably one of the hard to
22 quantify, about ten least culpable in this case, your Honor.

23 THE COURT: Okay, thank you.

24 Anything further, Mr. Scholar?

25 MR. SCHOLAR: Just with respect to the conditions at

1 the MCC. There have been some discussions I've had with
2 Mr. Letterio that he's described conditions that have just been
3 horrific. And I think it becomes dangerous to engage in this
4 discussion about, well, other people haven't complained, but I
5 think not many people in the MCC have a degree, have an
6 advanced degree and can express basically what's happening day
7 in and day out. I think because he's expressed these things,
8 he should be taken seriously.

9 THE COURT: I will consider them in my overall
10 sentencing calculation. I will also just strongly encourage
11 Mr. Scholar, even after sentencing, some direct communication
12 with the counsel at the MCC with any specific concerns, and you
13 can indicate that it has been raised as an issue here and Judge
14 Nathan encouraged that, so if there's a specific complaint that
15 can be addressed, I'll ask you to take that to the counsel
16 there, and you're welcome to CC the Court on any such
17 communications.

18 MR. SCHOLAR: Thank you, your Honor.

19 THE COURT: Mr. Letterio, you're under no obligation
20 to make a statement, sir, but if you'd like to, you may do so
21 now. If you'll pull up the mic. Thank you.

22 THE DEFENDANT: Good morning, your Honor.

23 THE COURT: Good morning.

24 THE DEFENDANT: Thank you for the chance to speak on
25 my behalf today. As well I would like to thank Mr. Scholar for

1 the work he's done on my case. As well I would like to thank
2 all my family, friends, loved ones, people who have come to
3 support me in this situation.

4 I've heard what the government has stated about me,
5 I've heard even what Mr. Scholar has stated about me, but I
6 feel like the only one who can truly express who I am would be
7 myself, no one else.

8 I know I've made mistakes in my life. That I can
9 agree to. I'm human. And I've had my ups and downs. I've
10 battled with depression, I've battled with many different
11 things throughout my life.

12 When I first went up top -- when I first went up north
13 in 2008 and I came home 2009, I felt lost. A lot of things I
14 had lost that I didn't know how to get back. I went to work
15 programs, I tried to do things that would focus into the life
16 that I was trying to live before I even went into jail. It's
17 felt like doors kept closing on me.

18 In that process, I came home with two children. I
19 wasn't sure how I was going to support a family, which ended up
20 really leading into that family being broken apart because me
21 and their mother just couldn't stay afloat with a lot of
22 things, even though we ended up having a third child, which
23 only made situations worse, because now the finances were just
24 obsolete.

25 I praise her all the time because she stands on her

1 two feet, even while I was struggling.

2 But at the same time, I knew at one point I had to
3 make a change. And I tried to focus my ways into finding
4 different things in my community that I could do to start
5 changing my life. I thank Reverend Q and Pastor Tim because
6 they gave me that opportunity. Even when I didn't see
7 something in myself, Pastor Tim's wife, Reverend Q, did. It
8 took me a little while to even agree to even come aboard to
9 work with her, because she seen what I was doing in my
10 community with the children, coaching, and she kept asking me
11 like, "Why don't you be a mentor?" I didn't feel I deserved
12 it. I didn't feel like I had done anything in my life to be
13 that.

14 Then one day she finally convinced me, "Just go to the
15 meeting. Just represent us in this meeting." I went to 161st
16 and I sat along a panel of different people that was speaking
17 to youth that were at risks. It kind of took me -- like at
18 a -- I was appalled kind of when I listened to other people,
19 but when I seen how they responded to me, I was taken back
20 because I seen the connection.

21 When the meeting was over, several of them pulled me
22 to the side because they understood who I was and where I was
23 trying to go with my life.

24 Yeah, I understand that regardless of what, people do
25 make mistakes, and the same way I teach my children, you have

1 to man up for your mistakes. That's a fact. I would never let
2 them get away with anything without them accepting their
3 responsibilities, admitting that they was wrong in doing
4 something. But it's not about just what they've done wrong,
5 it's about what they do afterwards that determines truly who
6 they are. And I state that to them all the time. It takes
7 courage to change. And if you're not willing to state that
8 courage, if you're not willing to have that courage then
9 there's no possibility to change. But it also takes
10 opportunities. And every time I've been given an opportunity
11 to show that I want to change, I've flourished in it. Whether
12 it had been Reverend Q, whether it had been Pastor Tim, whether
13 it had been my counselor here.

14 Honestly, before I was in MCC, I don't think anybody
15 ever did the things that I did here. My counselors spoke with
16 me once or twice and they seen that I had determination. They
17 gave me the opportunity, they seen me tutoring people
18 one-on-one in my housing unit, they asked me if I would run a
19 class. I went from just tutoring GED for a whole unit to
20 facilitating anger management within my unit. When I found out
21 there was an issue where a lot of inmates weren't get bible
22 study classes, well actually, they weren't allowed to go to
23 church, I spoke with the secretary of the unit secretary, and
24 we implemented bible study classes within the unit.

25 Honestly, what I'm trying to point out is that no

1 matter what, if I'm given an opportunity, I'm gonna take full
2 advantage of it. Not for myself as much as for other people.
3 That's what makes me feel more complete, when I know that I've
4 helped somebody else.

5 While I've been here, I've received letters from the
6 players that were on my teams. I coached six different teams,
7 that's over 100 young adults down to little kids. They've
8 asked me what prep schools they should go to, what colleges
9 they should apply to, should they go to different interviews on
10 this college or that college. I'm sitting in a federal prison
11 getting letters like this, and it's making me still feel like
12 you've done something right, Tony, because somebody actually
13 cares about your decision, about how you would feel if they
14 went to this school or what they should do with their life.

15 I realize that I've made mistakes, but I feel like
16 with the opportunities, even speaking with people like Brett at
17 Focus Forward or Ms. Burns, I told them, I'm here to learn from
18 y'all so when I do get home I can learn from the different
19 mannerisms and the different ways that you facilitate your
20 classes in the same programs I was working with before.

21 I stay in constant contact with Reverend Q and Pastor
22 Tim to see if I could have my job back. They have agreed with
23 that. I've stayed in constant contact with Mr. Henderson from
24 Lead By Example. He told me that upon my release I could come
25 see him about employment, as well as the tournament that I

1 coached in before, which is Future Talent Basketball League.

2 All I really want to do is just have the opportunity
3 now to get back even more, because I know that I'll be able to
4 support myself while still giving back. There won't be me
5 having to worry about where the next dollar is coming from or
6 how can I help my children, how am I gonna get them school
7 clothes. I have that foundation, and that's what anybody needs
8 when they're building is a foundation.

9 The support that I have from family and friends, as
10 you can see, is something that I hold dearly, and I love them
11 for being here because nobody really has to come support you
12 when you're in a situation like this. But knowing that I have
13 that behind me, that gives me the drive to push forward even
14 more. Thank you, your Honor.

15 THE COURT: Thank you, Mr. Letterio.

16 All right, counsel. Anything further? Any reason why
17 sentence should not be imposed at this time?

18 MS. FEINSTEIN: No, your Honor.

19 MR. SCHOLAR: No, your Honor.

20 THE COURT: As I've stated, the guideline range
21 applicable to this case is 63 to 78 months' imprisonment.

22 Under the Supreme Court's decision in Booker and its
23 progeny, the guideline range is only one factor that the Court
24 must consider in deciding the appropriate sentence. I'm also
25 required to consider the other factors set forth in 18 U.S.C.,

1 Section 3553(a). These include the nature and circumstances of
2 the offense, and the history and characteristics of the
3 defendant, the need for the sentence imposed to reflect the
4 seriousness of the offense, to promote respect for the law and
5 to provide just punishment for the offense, to afford adequate
6 deterrence to criminal conduct, to protect the public from
7 further crimes of the defendant, to provide the defendant with
8 needed educational or vocational training, medical care, or
9 other treatment.

10 I am to take into account the kinds of sentences
11 available, the guideline range, any pertinent policy statement,
12 the need to avoid unwarranted sentence disparities among
13 defendants with similar records who have been found guilty of
14 similar conduct, and the need to provide restitution to any
15 victims of the offense.

16 I am to impose a sentence sufficient but no greater
17 than necessary to comply with the purposes I've just described.
18 I have given substantial thought and attention to the
19 appropriate sentence in this case in light of the 3553(a)
20 factors and the appropriate purposes of sentencing as reflected
21 in that statute.

22 Mr. Letterio does stand convicted of what is a serious
23 offense. Specifically, he sold marijuana, and did so along
24 with members and associates of Big Money Bosses, which is a
25 violent street gang that controlled a section of the Bronx on

1 White Plains Road. BMB trafficked in narcotics, including
2 cocaine, marijuana, and prescription pills. It also kept
3 firearms and engaged in acts of violence, including shootings,
4 stabbings, and gang assaults. BMB does have a violent cultural
5 norm around snitching or cooperating in retaliation against
6 those who do. This is a gang that ravaged the areas it
7 occupied with dangerous drugs and violence.

8 Now, Mr. Letterio is not a member of that gang, but he
9 did, by his own admission, participate in the selling of
10 narcotics along with those involved in the gang. He did so as
11 a manager in that he directed at least one person, specifically
12 Rye Thomas, with respect to marijuana sales. As I've said,
13 that was by his own admission, and there are text messages that
14 do seem to give some color to that direction. Other messages
15 suggest Mr. Letterio's expression of frustration with
16 individuals who may be cooperating with law enforcement.

17 Given this description of Mr. Letterio's role in this
18 conspiracy, a serious sentence is warranted to provide just
19 punishment, deter Mr. Letterio and others, promote respect for
20 the law, and to protect the public from further crimes of the
21 defendant.

22 Now, I do think this factor of deterrence is
23 particularly important here as this is not Mr. Letterio's first
24 offense. He does have multiple prior convictions related to
25 narcotics trafficking. Despite punishment in those instances,

1 Mr. Letterio was not sufficiently deterred and has repeated his
2 involvement in the drug conspiracy. Thus, a serious sentence
3 is warranted to deter Mr. Letterio and protect the public from
4 further crimes of the defendant.

5 Now, of course, I must and I do take into account the
6 history and characteristics of this defendant. As a
7 preliminary matter, I note that Mr. Letterio pled guilty to
8 this offense, and he did so early and with acceptance of
9 responsibility. There is no suggestion of his own involvement
10 in violence related to this gang activity or otherwise.

11 Moreover, there are strong indications in the record
12 that Mr. Letterio is prepared to put this kind of criminal
13 activity behind him. This is important to me. For example, I
14 am greatly encouraged to see that Mr. Letterio has participated
15 in a substantial number of education courses offered at MCC,
16 maybe every one, Mr. Scholar, is that --

17 MR. SCHOLAR: I think so, Judge.

18 THE COURT: Every one. That's impressive. He's
19 tutored other inmates who are clearly grateful for his
20 commitment and encouragement, and he is learning to be a
21 counselor, and has obviously made a very strong impression on
22 the folks at Focus Forward and --

23 MR. SCHOLAR: Lead By Example.

24 THE COURT: -- Lead By Example -- thank you -- which
25 I'm encouraged to see.

1 And there's an individual from Focus Forward --
2 multiple individuals here today, and I did receive letters from
3 them, as well.

4 Additionally, I do take into account as part of my
5 assessment of the history and characteristics of this defendant
6 the difficult childhood of poverty that Mr. Letterio endured.

7 Mr. Letterio, you're obviously a very smart individual
8 and you've valued schooling. You attended basketball on a
9 scholarship, but when a knee injury ended that possibility, you
10 lost your scholarship, and no doubt this did have significant
11 impact on your employment prospects and opportunities.

12 Of course, even when faced with difficult
13 circumstances, selling drugs and doing so in connection with a
14 violent street gang is never an answer to such circumstances.
15 Those are choices that have negative impact, of course, on you
16 and your family by separating you from them. It is certainly
17 my hope and expectation that Mr. Letterio has learned and is
18 learning that lesson.

19 I also take into account Mr. Letterio's substantial
20 community ties. The letters from his many friends and family
21 members, many of whom are here today, describe him as a devoted
22 father and a caring and generous friend and community member.
23 This is encouraging as it is certainly my hope and expectation
24 that this support will assist Mr. Letterio upon his release and
25 reentry into the community and that these many friends and

1 family members will continue to participate positively in
2 Mr. Letterio's life following his release to help ensure that
3 he does make the better decisions that he's on the path toward
4 now.

5 Defense counsel, as I noted earlier, has encouraged me
6 to consider the sentences that Mr. Letterio has served in state
7 facilities for related conduct which will not be credited by
8 the BOP. I guess we didn't discuss this earlier. My basic
9 view is that that fact of the underlying conduct is taken into
10 account by the lack of criminal history points. None are being
11 applied here despite those earlier sentences, so I won't
12 subtract the time in any way, but I do take it into account in
13 my overall calculations.

14 Defense counsel also urges consideration of the harsh
15 conditions in the MCC, as well as Mr. Letterio's age, which
16 counsel contends -- I believe your 36, Mr. Letterio?

17 THE DEFENDANT: Yes, your Honor, I am.

18 THE COURT: All right -- which defense counsel
19 contends is old enough to suggest the lack of recidivism is
20 likely. I think there's some merit to that, although it can
21 cut both ways. There is a lot to give me hope that
22 Mr. Letterio is on a path to better choices, but I do take into
23 account these factors, though they don't have a substantial
24 impact on my sentencing conclusion.

25 I also strive to avoid unwarranted sentence

1 disparities, both with respect to codefendants in this case as
2 well as others more generally who engage in similar conduct,
3 though, of course, all sentencing conclusions are, at base,
4 individualized.

5 In sum, although I am convinced that a serious period
6 of incarceration is necessary in this case, I will
7 significantly vary downward from the guidelines in light of the
8 factors that I've discussed. I'll now state the sentence I
9 intend to impose.

10 Mr. Letterio, will you please rise?

11 It is the judgment of this Court that you're remanded
12 to the custody of the Bureau of Prisons for 24 months, to be
13 followed by a period of three years of supervised release.

14 You may be seated.

15 During your term of supervised release, the standard
16 conditions apply.

17 In addition, you'll be subject to the following
18 mandatory conditions:

19 You shall not submit another federal, state, or local
20 crime. You shall not illegally possess a controlled substance
21 or firearm or destructive device.

22 I will impose a special condition requiring drug
23 treatment and testing. You shall cooperate in the collection
24 of DNA as directed by the probation officer.

25 In addition, the following special conditions apply:

1 You'll participate in an outpatient treatment program
2 approved by the probation officer. This term is further
3 outlined on page 30 of the presentence report. You'll also be
4 subject to the search term outlined on page 30 of the
5 presentence report.

6 You will report to the nearest probation office within
7 72 hours of release, and I do recommend that you be supervised
8 in your district of residence upon release.

9 I do want to strongly encourage upon release,
10 Mr. Letterio, the continued participation with Focus Forward or
11 a comparable program. That involvement is critical to my
12 assessment of your reentry path, and I'm optimistic that your
13 involvement there will be important to you and important to the
14 individuals who you help counsel.

15 Ms. Feinstein, nothing here to consider regarding
16 forfeiture or restitution?

17 MS. FEINSTEIN: No, your Honor.

18 THE COURT: I will waive the fine because I don't
19 believe that you have the ability to pay the fine.

20 I am imposing a mandatory special assessment of \$100,
21 which shall be due immediately.

22 Does either counsel know of any legal reason why the
23 sentence should not be imposed as stated?

24 MS. FEINSTEIN: No, your Honor.

25 MR. SCHOLAR: Your Honor, would you consider

1 recommending Mr. Letterio for the residential drug program?

2 THE COURT: I will.

3 MR. SCHOLAR: Thank you, your Honor. Nothing further.

4 THE COURT: All right. Sentence as stated is imposed.

5 I do find the sentence is sufficient but not greater than
6 necessary to satisfy the sentencing purposes I've described
7 earlier.

8 Mr. Letterio, when you are released and on supervised
9 release you'll have the guidance and support of the probation
10 department. As you re-establish your day-to-day life, during
11 your three-year period of supervised release, I do encourage
12 you to take advantage of those resources as the people in
13 probation are committed to helping you succeed.

14 That said, I must caution you that you must comply
15 strictly with all of your conditions of supervised release. If
16 you are brought back before me for a violation of any of those
17 conditions, I may sentence you to another term of imprisonment.
18 My sentencing conclusion and substantial variance here were
19 dependent in large measure upon my assessment that the
20 rehabilitation path that you're on is a positive one, and I
21 hope and expect that your adherence to all conditions of
22 supervised release during your period of supervision will help
23 demonstrate that I've made an appropriate judgment in that
24 regard.

25 I will take defense counsel's recommendation and

1 recommend Mr. Letterio for the residential drug treatment
2 program for consideration and evaluation for placement in that.

3 Any designations regarding location, Mr. Scholar?

4 MR. SCHOLAR: We would ask that it be recommended that
5 he be designated as a facility as close to New York as possible
6 so he can see his friends and family.

7 THE COURT: For that basis, I do make that
8 recommendation to the Bureau of Prisons.

9 Ms. Feinstein, are there any remaining counts or
10 underlying indictments that need to be dismissed at this time?

11 MS. FEINSTEIN: There are your Honor. We move to
12 dismiss all of those counts.

13 THE COURT: Motion is granted. All remaining counts
14 or underlying indictments are dismissed.

15 Mr. Letterio, I see no basis for an appeal, but I am
16 required to inform you of your appellate rights. To the extent
17 that you've not given up your right to appeal your conviction
18 and sentence through your plea of guilty and the agreement that
19 you entered into with the government in connection with that
20 plea, you do have the right to appeal. If you're unable to pay
21 the cost of an appeal, you may apply for leave to appeal in
22 forma pauperis. The notice of appeal must be filed within 14
23 days of the judgment of conviction.

24 Counsel, is there anything else that I can address at
25 this time?

1 MS. FEINSTEIN: Not from the government, your Honor.

2 Thank you.

3 MR. SCHOLAR: Nothing from the defense.

4 THE COURT: Thank you.

5 Mr. Letterio, good luck to you.

6 We're adjourned.

7 (Adjourned)

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